

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Courtney Motley,

Plaintiff,

V.

Carlos Silva, et al.,

Defendants.

Case No. 2:24-cv-00735-APG-DJA

Order and **Report and Recommendation**

Clark County Detention Center inmate, Plaintiff Courtney Motley, submitted initiating documents to the Court which include an application to proceed *in forma pauperis* and a civil rights complaint. (ECF Nos. 1, 1-1). Because Plaintiff's application is complete, the Court grants it and screens Plaintiff's complaint. Because Plaintiff's complaint states certain claims that are not cognizable, but others that are, the Court recommends dismissing some claims with prejudice and allowing others to proceed.

I. *In forma pauperis* application.

Plaintiff filed the forms required to proceed *in forma pauperis* (without paying the filing fee). (ECF No. 1). Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the application to proceed *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now screen Plaintiff's complaint.

II. Legal standard for screening.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend

1 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
2 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
3 F.3d 1103, 1106 (9th Cir. 1995).

4 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
5 complaint for failure to state a claim upon which relief can be granted. Review under Rule
6 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
7 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
8 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
9 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
10 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
11 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v.*
12 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
13 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
14 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
15 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
16 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
17 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
18 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
19 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

20 Federal courts are courts of limited jurisdiction and possess only that power authorized by
21 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
22 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
23 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
24 federal law creates the cause of action or where the vindication of a right under state law
25 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
26 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
27 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
28 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”

1 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal
2 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
3 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
4 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
5 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
6 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

7 **III. Screening Plaintiff’s complaint.**

8 Plaintiff sues Las Vegas Metropolitan Police Department (“LVMPD”) Officer Carlos
9 Silva, University Medical Center Nurse Jeri Dermanetian, LVMPD Officer J. Manzanedo, and
10 LVMPD Officer Erica Nogle for damages and injunctive relief, alleging seven causes of action.
11 Plaintiff’s claims arise out of his arrest on August 18, 2021. He claims that he was at his
12 girlfriend, Yasmeen Rubin’s house and that the two had consensual sex. Plaintiff claims that he
13 later left the house to use Rubin’s neighbor’s phone when Officer Silva and Officer Manzanedo
14 arrested him, making up the story that the officers had seen Plaintiff fleeing Rubin’s house and
15 jumping over a wall, all while putting his pants on as a reason to arrest him.

16 Plaintiff asserts that Nurse Dermanetian lied during testimony regarding the extent of
17 Rubin’s injuries and that Officers Silva, Manzanedo, and Nogle lied on the stand and in police
18 reports about the facts underlying the charges brought against Plaintiff. Plaintiff asserts, both
19 directly and by attaching a document, that certain charges against him—Lewdness, Home
20 Invasion, Buy/Possess/Receive Stolen Property, Battery by Strangulation, Sexual Assault,
21 Kidnapping, and Burglary while In Possession of Firearm or Deadly Weapon—were dismissed,
22 although Plaintiff does not explain when.

23 Plaintiff brings seven claims. Claims 1 and 2 are titled “Deceit.” Claims 3 and 4 are titled
24 “Slander/Defamation.” Claim 5 is titled “Libel Defamation.” Claim 6 is titled “Unreasonable
25 Search and Seizure” and Claim 7 is titled “Racial Profiling.” The Court liberally construes
26 Plaintiff’s complaint as bringing state law claims for perjury and defamation *per se* and
27 Constitutional claims under 42 U.S.C. § 1983 for unreasonable search and seizure in violation of
28

1 the Fourth Amendment and racial profiling in violation of the Equal Protection Clause of the
 2 Fourteenth Amendment.

3 ***A. Perjury.***

4 While perjury is a federal and state crime, there is no private right of action under either
 5 federal or Nevada law for perjury. *See Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2011)
 6 (“private rights of action to enforce federal law must be created by Congress,” and without a
 7 congressional intent to create a private remedy, “a cause of action does not exist and courts may
 8 not create one.”); *see Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (criminal statutes
 9 “provide no basis for civil liability”); *see Jordan v. State ex rel. Dep’t of Motor Vehicles & Public*
 10 *Safety*, 110 P.3d 30, 47 n.51 (Nev. 2005) *overruled on other grounds*, *Buzz Stew, LLC v. City of*
 11 *N. Las Vegas*, 181 P.3d 670, 672 n.6 (Nev. 2008); *see Kastis v. Alvarado*, No. 1:18-cv-01325-
 12 DAD-BAM, 2019 WL 3037912, at *9 (E.D. Cal. July 11, 2019).

13 Plaintiff alleges that Nurse Dermanetian lied during testimony regarding the injuries
 14 Rubin suffered. Plaintiff alleges that Officer Silva lied during testimony that he saw Plaintiff
 15 jumping over a wall and putting on his pants in public. And Plaintiff alleges that Rubin lied
 16 during testimony to the Grand Jury that Plaintiff was holding a boxcutter when really, Plaintiff
 17 was holding a knife which did not resemble a boxcutter. However, Plaintiff’s perjury claims
 18 against Nurse Dermanetian, Officer Silva, and Rubin (to the extent he brings claims against her;
 19 she is not listed as a defendant) fail because perjury is not a civil cause of action. The Court
 20 recommends dismissing Plaintiff’s perjury claims with prejudice.

21 ***B. Defamation per se.***

22 Defamation encompasses both slander (spoken) and libel (written) defamatory statements.
 23 *Flowers v. Carville*, 292 F.Supp.2d 1225, 1232 n.1 (D. Nev. 2003). To state a claim for
 24 defamation, Plaintiff must allege “(1) a false and defamatory statement by [a] defendant
 25 concerning the plaintiff; (2) an unprivileged publication a third person; (3) fault, amounting to at
 26 least negligence; and (4) actual or presumed damages.” *Rosen v. Tarkanian*, 453 P.3d 1220, 1225
 27 (Nev. 2019); *see also* Nev. Rev. Stat. § 200.510(1) (defining libel). Some classes of defamatory
 28 statements—known as “defamation *per se*”—are considered so likely to cause serious injury to

1 reputation and pecuniary loss that these statements are actionable without proof of damages. *K-*
 2 *Mart Corp. v. Washington*, 886 P.2d 274, 284 (Nev. 1993) (overruled in part on other grounds).
 3 These include the imputation of a crime and imputing serious sexual misconduct. *Id.*

4 Plaintiff alleges that Officer Nogle made false statements about Plaintiff being lewd in
 5 public and possessing a hatchet in the police report that was published to the police database and
 6 in court. Plaintiff alleges that Officers Manzanedo and Silva also contributed false statements to
 7 this report. Plaintiff claims that this caused him to spend time in jail, lose his job, and lose
 8 friends. For the purposes of screening, Plaintiff has alleged a colorable claim for defamation *per*
 9 *se* against Officers Nogle, Manzanedo, and Silva.

10 **C. *Unreasonable search and seizure.***

11 The Fourth Amendment protects the “right of the people to be secure in their persons,
 12 houses, papers, and effects, against unreasonable searches and seizures,” and requires that a
 13 warrant sanctioning a search or seizure be supported by probable cause. *See U.S. Const. Amend.*
 14 4. Plaintiff alleges that “DNA was taken from [him] without permission, officers threatened not
 15 to feed me.” He also alleges that Officers Silva and Manzanedo went through his pockets and
 16 obtained his knife without a search warrant. Plaintiff asserts that officers had no probable cause
 17 to arrest him—let alone to search him—because they invented the fact that he was being lewd in
 18 public when Plaintiff was really at a neighbor’s house using the phone. For the purposes of
 19 screening, Plaintiff has alleged a colorable claim of unreasonable search and seizure in violation
 20 of the Fourth Amendment against Officers Silva and Manzanedo.

21 **D. *Racial profiling.***

22 “Racial profiling can constitute a deprivation of a citizen’s right to equal protection under
 23 the law.” *Thomas v. Melendez*, No. 1:16-cv-01759-LJO-JLT, 2016 WL 7116720 at *3 (E.D. Cal.
 24 Dec. 7, 2016) (citing *Whren v. United States*, 517 U.S. 806, 813 (1996) and *James v. City of*
 25 *Seattle*, No. C10-1612-JLR, 2011 WL 6150567, at *13 (W.D. Wash. Dec. 12, 2011)). To state a
 26 claim for racial profiling in violation of the Equal Protection Clause, “a plaintiff must show that
 27 the defendants acted with an intent or purpose to discriminate against the plaintiff based on
 28 membership in a protected class.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166-67 (9th

1 Cir. 2005). Plaintiff alleges that Officers Silva and Manzanedo made up a reason to stop and
2 arrest him because he is Black. Plaintiff points to the fact that he was the only Black male outside
3 at the time and that officers had to make up a reason to stop him to support his claim. For the
4 purposes of screening, Plaintiff has alleged a colorable claim for racial profiling in violation of
5 the Fourteenth Amendment Equal Protection Clause against Officers Silva and Manzanedo.

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ORDER

8 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*
9 *pauperis* (ECF No. 1) is **granted**. Plaintiff will **not** be required to pay an initial installment fee.
10 Nevertheless, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
11 Prison Litigation Reform Act. The movant herein is permitted to maintain this action to
12 conclusion without the necessity of prepayment of fees or costs or the giving of security therefor.

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IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915, as amended by the
14 Prison Litigation Reform Act, the Clark County Detention Center will forward payments from the
15 account of **Courtney Motley, Inmate No. 7030758**, to the Clerk of the United States District
16 Court, District of Nevada, 20% of the preceding month's deposits (in months that the account
17 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of Court is
18 kindly directed to send a copy of this order to the Finance Division of the Clerk's Office. The
19 Clerk of Court is also kindly directed to send a copy of this order to the attention of **Chief of**
20 **Inmate Services for the Clark County Detention Center** at Clark County Detention Center,
21 330 S. Casino Center Blvd., Las Vegas, NV 89101.

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IT IS FURTHER ORDERED that, even if this action is dismissed, or is otherwise
23 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
24 Prison Litigation Reform Act.

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IT IS FURTHER ORDERED that the Clerk of Court is kindly directed to file Plaintiff's

26 complaint (ECF No. 1-1) on the docket.

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1 **IT IS FURTHER ORDERED** that the following claims shall proceed.

2 • Defamation against Officer Erica Nogle, Officer Carlos Silva, and Officer J.
3 Manzanedo.
4 • Unreasonable search and seizure in violation of the Fourth Amendment against Officer
5 Carlos Silva and Officer J. Manzanedo.
6 • Racial profiling in violation of the Equal Protection Clause of the Fourteenth
7 Amendment against Officer Carlos Silva and Officer J. Manzanedo.

8 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to issue
9 summonses for: (1) Las Vegas Metropolitan Police Department Officer Erica Nogle #9624;
10 (2) Las Vegas Metropolitan Police Officer Carlos Silva #18356; and (3) Las Vegas Metropolitan
11 Police Department Officer J. Manzanedo #17753.

12 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to deliver the
13 three summonses, three copies of the complaint (ECF No. 1-1), and three copies of this order to
14 the United States Marshals Service (“USMS”) for service.

15 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send Plaintiff
16 three blank copies of the Form USM-285.

17 **IT IS FURTHER ORDERED** that Plaintiff must complete one Form USM-285 for each
18 defendant proceeding in this case—Officer Nogle, Officer Silva, and Officer Manzanedo—and
19 will have until **June 18, 2024** to send his completed Forms USM-285 to the USMS for service.

20 **IT IS FURTHER ORDERED** that, within twenty-one days after receiving a copy of the
21 Forms USM-285 back from the USMS showing whether service has been accomplished, Plaintiff
22 must file a notice with the Court identifying whether the defendants were served. If Plaintiff
23 wishes to have service again attempted on an unserved defendant, Plaintiff must file a motion
24 with the Court identifying the defendant and specifying a more detailed name and/or address for
25 that defendant or whether some other manner of service should be attempted.

26 **IT IS FURTHER ORDERED** that Plaintiff shall have until **August 26, 2024**, to
27 complete service. Fed. R. Civ. P. 4(m).

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that Plaintiff's perjury claims against Officers Silva and Manzanedo and Nurse Dermanetian be **dismissed with prejudice**.

NOTICE

Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED: May 28, 2024

DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE